

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORLAND DIVISION

ANTONIO A. GUTIERREZ,

Civil Case No. 2:11-CV-01095-KI

Plaintiff,

OPINION AND ORDER ON
DISCOVERY MOTIONS

v.

**SERGEANT NICK V. NGUYEN (Oregon
Department of Corrections (ODOC) Snake
River Correctional Institution (SRCI));
LIEUTENANT M. CLEMENTS ((ODOC)
SRCI); J. GILLUM ((ODOC) SRCI
Correctional Officer),**

Defendants.

Antonio A. Gutierrez
#5448026
SRCI
777 Stanton Blvd.
Ontario, OR 97914

Pro se Plaintiff

Ellen F. Rosenblum
Attorney General
Andrew Hallman
Nina Englander
Assistant Attorneys General
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Attorneys for Defendants

KING, Judge:

I make rulings on the pending motions as follows:

Plaintiff's Motion to Dismiss [#77] is GRANTED. Defendants do not object and have construed the allegations against Lieutenant Clements as though directed to Lieutenant Rebecca Krueger. As a result, Lieutenant Rebecca Krueger is substituted for M. Clements as a defendant. To avoid confusion, the parties are instructed to reflect the substitution in the case caption. I also DENY as moot Plaintiff's motion styled "Civil Action Service Request Pursuant to 28 U.S.C. § 1915" [#78]. The Court construes defendants' agreement with plaintiff's party substitution as a waiver of service on newly identified defendant Lieutenant Rebecca Krueger.

Plaintiff's Motions to Compel [##73, 90, 92] are DENIED. I adopt as my own the rationale in defendants' Response to Motion to Compel [#75]. I underscore that the 1998 incident, and any incentive move program implemented soon thereafter, are not relevant to any pending claims, except to the extent defendants have liberally read the Amended Complaint and provided Officer Gillum's response to a question regarding the incident. Plaintiff suggests he may like to reinstate a claim of retaliation, but I instruct him any such request would be futile; plaintiff has not and cannot allege his 1998 assault on a fellow inmate (for which he was

criminally sanctioned) is constitutionally protected conduct, which is a required element for the claim. See Order to Proceed in Forma Pauperis and to Dismiss in Part 5 (Oct. 13, 2011) [#9].

I also GRANT defendants' Motion to Stay Discovery [#82]. If plaintiff is not able to adequately respond to defendants' Motion for Summary Judgment, he may submit an affidavit or declaration accompanying his summary judgment response identifying specific information he needs in order to respond and explaining why the information is relevant. See Fed. R. Civ. P. 56(d). At that time, the Court may (1) defer considering the motion for summary judgment or deny it; (2) allow plaintiff time to obtain affidavits or declaration or to take discovery; or (3) issue any other appropriate order.

Since I have stayed discovery, I decline to consider plaintiff's request to extend the discovery deadline at this time. I will set a new discovery deadline after I issue an opinion on defendants' Motion for Summary Judgment. Additionally, I will address plaintiff's motion for written depositions, and any outstanding subpoena requests, after resolution of the pending summary judgment motion.

Most recently, plaintiff filed a Motion for Extension of Time [94]. I deny as moot plaintiff's request for more time to respond to defendants' request to stay discovery as I have already ruled on the motion. I grant plaintiff's request to extend the time to file his summary judgment response; his response must be filed by April 30, 2013.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Dismiss [77] is GRANTED: Lieutenant M. Clements is dismissed and Lieutenant Rebecca Krueger is added as a defendant (represented by the same attorneys). Plaintiff's motion styled "Civil Action Service Request Pursuant to 28

U.S.C. § 1915" [78] is DENIED as moot. Plaintiff's Motions to Compel [73, 90, 92] are DENIED. Defendants' Motion to Stay Discovery [82] is GRANTED. Plaintiff's Motion for Extension of Time [94] is GRANTED in part and DENIED in part. Plaintiff's response to defendants' Motion for Summary Judgment is due 4/30/2013.

IT IS SO ORDERED.

DATED this 4th day of April, 2013.

/s/ Garr M. King
Garr M. King
United States District Judge